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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO/OAKLAND DIVISION

JUDE DELGADO, an individual

Plaintiff,) CASE NO. C 07-3526 JSW
vs.) NOTICE OF MOTION AND MOTION FOR ORDER REMANDING CASE TO STATE COURT AND AWARDING COSTS AND ATTORNEYS' FEES TO PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MICHAEL HOFFMAN
WILLIAMS LEA, INC., a Corporation; Charlotte Dolly, an individual; and DOES 1 through 100, inclusive,) [28 U.S.C. Section 1447; FRCP 12(h)(3)]
Defendants.) DATE: August 31, 2007
	TIME: 9:00 a.m. PLACE: CTRM 2, 17th Floor

NOTICE OF MOTION TO REMAND

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on August 31, 2007, at 9:00 am at the above-named court, located at Courtroom 2, 17th floor, 450 Golden Gate Avenue, San Francisco, California, Plaintiff Jude Delgado will and hereby does move this Court for an order providing that the instant action

-i-

MOTION FOR ORDER REMANDING CASE TO STATE COURT AND AWARDING COSTS AND
 ATTORNEYS' FEES TO PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION
 OF MICHAEL HOFFMAN
 C 07-3526 JSW

1 be remanded back to State Court, that defendants pay an award of attorneys' fees and costs to
2 plaintiff in the amount of \$1400 or in an amount that the Court deems appropriate, and that the
3 Clerk of the Court send a certified copy of the remand order to the clerk of the San Francisco
4 Superior Court where the action was originally filed.

5 This Motion will be based on this Notice, the Memorandum of Points and Authorities
6 filed herewith, the accompanying Declaration of Michael Hoffman, the complete files and
7 records in this action, and all other matters and evidence that may be presented at the hearing on
8 this motion.

9
10 DATED: July 22, 2007

LAW OFFICES OF MICHAEL HOFFMAN

11 /S/
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13 MICHAEL HOFFMAN
14 Attorneys for Plaintiff
15 JUDE DELGADO
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-ii-

MOTION FOR ORDER REMANDING CASE TO STATE COURT AND AWARDING COSTS AND
ATTORNEYS' FEES TO PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION
OF MICHAEL HOFFMAN
C 07-3526 JSW

Table of Contents

I.	Relief Requested, Summary of Argument.....	1
II.	Statement of Facts.....	1
III.	Procedural Posture	4
IV.	Legal Argument	4
	A. This Motion for Remand is Timely Because It Involves A Matter of the Court's Subject Matter Jurisdiction	4
	B. This Case Should Be Remanded to State Court Because There is Not Complete Diversity Between Plaintiff and Defendants and There is a Lack of Subject Matter Jurisdiction	4
	C. The Joinder of Defendant Dolly Was Not Fraudulent Because Defendant Is Not a "Sham" Defendant.....	5
	D. The Individual Defendant in This Case Is Liable to Plaintiff for Her Libel If She Published False Information Concerning the Plaintiff with Malice	5
	1. It Is Alleged That Dolly Acted with Malice	6
	2. It Is Alleged That the Statements Published by Dolly Were False	9
	3. The Statements Published by Dolly Concerning the Plaintiff Were Not Opinion	9
	E. This Court Should Award Fees to Plaintiff.....	9
V.	Conclusion	10
	DECLARATION OF MICHAEL HOFFMAN IN SUPPORT OF ATTORNEYS' FEES	10

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Table of Authorities

Cases

3	<u>Agarwal v. Johnson</u> , 25 Cal.3d 932, 944-945 (1979)	8
4	<u>Biggins v. Hanson</u> , 252 Cal. App.2d 16, 19 (1967).....	7
5	<u>Boyich v. Howell</u> , 221 Cal.App.2d 801, 803 (1963)	9
6	<u>Brewer v. Second Baptist Church</u> , 32 Cal.2d 791, 797 (1948).....	8
7	<u>Buckner v. FDIC</u> , 981 F.2d 816, 820 (5th Cir. 1993).....	4
8	<u>Coker v. Amoco Oil Co.</u> , 709 F.2d 1433, 1440 (11th Cir. 1983)	6
9	<u>Crowe v. Coleman</u> , 113 F.3d 1536, 1538 (11th Cir. 1997)	5
10	<u>Cruey v. Gannett Co.</u> 64 Cal.App.4th 356, 367 (1998)	7
11	<u>Farr v. Bramblett</u> , 132 Cal. App. 2d 36, 46 (1955).....	8
12	<u>Harte-Hanks Communications, Inc. v. Connaughton</u> , 491 U.S. 657, 692 (1989)	9
13	<u>Int'l Primate Protection League v. Administrators of Tulane Ed. Fund</u> , 500 U.S. 72, 87 (1991)...	4
14	<u>Keating v. Shell Chemical Co.</u> , 610 F.2d 328, 333 (5th Cir. 1980).....	5
15	<u>Morris v. Bridgestone/Firestone, Inc.</u> , 985 F.2d 238, 240 (6th Cir. 1993)	11
16	<u>Ritchey v. Upjohn Drug Co.</u> , 139 F.3d 1313, 1318 (9th Cir. 1998)	5
17	<u>Tenner v. Zurek</u> , 168 F.3d 328, 329-330 (7th Cir. 1999)	11
18	<u>Vandenburg v. Newsweek, Inc.</u> , 507 F.2d 1024, 1026 (5th Cir. 1975)	9
19	<u>Walrath v. Sprinkel</u> , 99 Cal. App.4th 1237 (2002)	7
20	<u>Washer v. Bank of America</u> , 21 Cal.2d 822, 831 (1943).....	8, 9
21	Statutes	
22	28 U.S.C. § 1332.....	4
23	28 U.S.C. § 1441(b)	4
24	28 U.S.C. § 1447(c)	4, 11
25	California Labor Code § 1182.11	5
26	Civil Code § 45	1, 6, 10
27	Civil Code § 46(3)(5).....	1, 6, 10

1	FRCP 12(h)(3)	4
2	Government Code § 12940	5
3	Government Code § 12940(h)	7
4	Government Code § 12945.2	5

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-v-

MOTION FOR ORDER REMANDING CASE TO STATE COURT AND AWARDING COSTS AND
ATTORNEYS' FEES TO PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION
OF MICHAEL HOFFMAN
C 07-3526 JSW

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 ***I. Relief Requested, Summary of Argument***

3 Plaintiff moves this Court for an order that: (1) the instant action be remanded back to
4 State Court, (2) Defendants pay an award of attorneys' fees and costs to Plaintiff, in the amount
5 of \$1400 or in an amount that the Court deems appropriate, and (3) the Clerk of the Court send a
6 certified copy of the order to the clerk of the state court where the action was originally filed.
7 Such an order is proper because diversity of citizenship does not exist between Plaintiff and all
8 Defendants and this Court therefore lacks subject matter jurisdiction.

9 It is alleged in the underlying State Court Complaint ("Complaint"), that Individual
10 Defendant Charlotte Dolly maliciously published false statements concerning the Plaintiff stating
11 about Plaintiff, "Time Card Falsification" without proper investigation as to the circumstances.
12 The defamatory publications consisted of oral and written, knowingly false and unprivileged
13 communications, tending directly to injure Plaintiff and Plaintiff's personal, business, and
14 professional reputation.

15 These publications included the following false and defamatory statements in violation of
16 Civil Code §§ 45 and 46(3)(5) with the meaning and/or substance that Plaintiff: violated
17 company policies; that he was such a poor performer that he deserved written warnings and
18 disciplinary actions against him; that he was incompetent; dishonest; untrustworthy; a
19 troublemaker; and made false complaints. (Complaint, Paragraph 47, Ex. "A", Defendants
20 Notice of Removal of Civil Action). This statement proximately led to the Plaintiff being fired
21 from his position in which he held for over 16 years. On the face of the Complaint, liability can
22 be established against Dolly and thus, the Removal was improvident. As joinder of the
23 defendant Dolly is proper, this motion to remand back to State Court and attorneys' fees should
24 be granted.

25 ***II. Statement of Facts***

26 On January 23, 2006, Heller Ehrman LLP ("Heller") outsourced their San Francisco
27 Document Production Department ("DOCS Center") to Williams Lea, Defendant herein, to

1 manage the DOCS Center for Heller. Plaintiff Jude Delgado was a former Heller employee,
2 having worked for the firm for 16 years. Plaintiff Delgado's Job Title was Senior Document
3 Specialist. His Manager for the DOCS Center department was Individual Defendant, Charlotte
4 Dolly. (Complaint, Paragraph 5).

5 At 5:45 a.m., on the morning of Tuesday, March 7, 2007, Plaintiff contacted the Williams
6 Lea DOCS Center and spoke with Shonda Furr, Graveyard Workflow Coordinator, to inform
7 her, the Graveyard shift, and the DOCS Center staff that he and Jude Delgado were running late
8 as a result of heavy traffic. Shonda Furr acknowledged this call and informed him that she would
9 be conveying the information regarding their late arrival to the DOCS Center staff, which
10 includes the DOCS Center Manager and DOCS Center Supervisor, per Williams Lea rules
11 regarding absences and late arrivals. (Complaint, Paragraph 6).

12 On Tuesday, March 27, 2007, Mr. Delgado and arrived at the DOCS Center
13 approximately 19 minutes late, arriving at 6:19 a.m., as verified by Heller's security card access
14 report. This was the first time they had ever arrived late for work. Jude Delgado and informed
15 the graveyard crew that they had arrived, and both immediately began to commence work on
16 projects at 6:22 a.m., as verified by Heller's IT Department computer log-in record. (Complaint,
17 Paragraph 7).

18 At approximately 8:00 a.m. on the same day, Ms. Chew, Mr. Delgado's co-worker,
19 remembered that she forgot to punch in and began to record her and Delgado's time in the
20 problem log. The problem log is used by everyone in the DOCS Center and is used when Kronos
21 is down; i.e., not working as a result of technical problems, or when employees arrive early or
22 late for work and forget to "punch," or, when employees forget to "punch" out or in from their
23 lunch break. (Complaint, Paragraph 9).

24 Because Mr. Delgado and Ms. Chew had identical work schedules, Ms. Chew started, but
25 did not complete, the entry in the problem log for both of them, as she had done in the past.
26 Plaintiff used the term "punch" because it was the terminology; i.e., the common term used when
27 referring to the recordation of time for payroll purposes. She indicated a time-in of 6 am because
28

1 this was their scheduled time in. (Complaint, Paragraph 11). There was no intent or effort made
2 by them to conceal the fact that they were late—they had already phoned in in advance, per
3 Williams Lea rules, prior to their 6:00 a.m. official start time—and the DOCS Center staff,
4 which included the DOCS Center Manager and the DOCS Center Supervisor, were all already
5 informed that they were running late. (Complaint, Paragraph 12).

6 When a question arose regarding an entry made in the problem log, it was incumbent
7 upon the DOCS Center Manager and/or the DOCS Center Supervisor to contact the employee
8 who made the entry to obtain clarification on the ambiguity of what was written in the problem
9 log, prior to making any corrections in Kronos. Upon receiving the clarification, the DOCS
10 Center Manager or DOCS Center Supervisor processes the corrections in Kronos. Neither the
11 DOCS Center Manager nor the DOCS Center Supervisor ever contacted Plaintiff to clarify or
12 explain the entry made in the problem log. (Complaint, Paragraph 13).

13 From Wednesday, March 28 to Wednesday, April 4, their termination date for “Time
14 Card Falsification,” neither the DOCS Center Manager nor the DOCS Center Supervisor had
15 contacted Jude Delgado or to clarify the entry made in the problem log. Both Jude Delgado and
16 were available to provide any clarification or answer any questions the DOCS Center Manager
17 and/or the DOCS Center Supervisor may have had regarding the problem log entry, as was done
18 in the past for everyone. (Complaint, Paragraph 14).

19 The libel of Plaintiff for “Time Card Falsification” started in April 2007, for the improper
20 purpose of retaliating against Plaintiff. (Comp, Par. 45) These publications included the
21 following false and defamatory statements (in violation of Civil Code §§ 45 and 46(3)(5)) with
22 the meaning and/or substance that Plaintiff violated company policies; that he was such a poor
23 performer that he deserved written warnings and disciplinary actions against him; that he was
24 incompetent; dishonest; untrustworthy; a troublemaker; and made false complaints. These and
25 similar statements published by Defendants, and each of them, expressly and impliedly asserted
26 that Plaintiff was incompetent, dishonest, and a poor employee. (Comp, Paragraph 47) These
27 false statements made in April of 2007 caused Plaintiff to be terminated. (Comp, Paragraph 45)
28

1 ***III. Procedural Posture***

2 Plaintiff filed the instant action in the San Francisco County Superior Court on May 29,
 3 2007. On July 6, 2007, Defendants served Plaintiff via US Mail a "Notice of Removal of Civil
 4 Action Under 28 U.S.C., Section 1332, 1441(b) (DIVERSITY)" ("Removal") with this Court. In
 5 its removal Defendant asserts that the individual defendants are sham defendants that have been
 6 named only for the purpose of creating diversity between Plaintiff and defendants. It is
 7 undisputed that the individual defendant Charlotte Dolly, ("Dolly") is a resident of the State of
 8 California.

9 ***IV. Legal Argument***

10 **A. This Motion for Remand is Timely Because It Involves A Matter of the Court's
 11 Subject Matter Jurisdiction**

12 A defect in the Federal court's subject matter jurisdiction can be raised at any time, even
 13 on appeal. Int'l Primate Protection League v. Administrators of Tulane Ed. Fund, 500 U.S. 72, 87
 14 (1991); 28 U.S.C. Section 1447(c); FRCP 12(h)(3). This motion for remand is timely therefore
 15 because it is based on a question of the court's subject matter jurisdiction.

16 **B. This Case Should Be Remanded to State Court Because There is Not Complete
 17 Diversity Between Plaintiff and Defendants and There is a Lack of Subject Matter
 18 Jurisdiction**

19 A case may be heard in federal court only if there is a federal question at issue or if there
 20 is complete diversity between all plaintiffs and all defendants. 28 U.S.C. § 1332. Remand may be
 21 ordered either for lack of subject matter jurisdiction or for "any defect in the removal procedure."
 22 28 U.S.C. Section 1447(c); see also Buckner v. FDIC, 981 F.2d 816, 820 (5th Cir. 1993).

23 The causes of action in the Complaint are: [1st] against Defendant Williams Lea Inc, for
 24 California Family Rights Act Failure to Guarantee Employment- (Government Code Section
 25 12945.2); [2nd] against Defendant Williams Lee for Employment Discrimination Failure to
 26 Engage (Government Code Section 12940) ; [3rd]] against Charlotte Dolly for Libel
 27 (Government Code Section 12940); [4th] for Failure to Compensate for Hours Worked under
 28 (California Industrial Welfare Commission Orders and California Labor Code 1182.11) .

1 **C. The Joinder of Defendant Dolly Was Not Fraudulent Because Defendant Is Not a
2 "Sham" Defendant**

3 Defendant makes the claim that the joinder of Defendant Dolly is "fraudulent and
4 designed to attempt to prevent the removal of the Superior Court Action to this Court...by the
5 assertion of a sham claim against a resident defendant." (Notice of Removal of Civil Action,
6 Paragraph 9). Defendants admit that Charlotte Dolly is a resident; the claim against Dolly is
7 clearly not fraudulent on its face.

8 To establish a "sham" or "fraudulent joinder," the removing party bears the burden of
9 proving that there was no possibility under state law that the individual defendant may be liable
10 to the plaintiff. Keating v. Shell Chemical Co., 610 F.2d 328, 333 (5th Cir. 1980) ("sham"
11 joinder requires showing "beyond doubt that the plaintiff can prove no set of facts in support of
12 his claim."). This heavy burden requires proof not only that the claim against the individual lacks
13 merit, but also that "the failure is obvious according to the settled rules of the state." Ritchey v.
14 Upjohn Drug Co., 139 F.3d 1313, 1318 (9th Cir. 1998); Crowe v. Coleman, 113 F.3d 1536, 1538
15 (11th Cir. 1997) ("if there is even a possibility that a state court would find that the complaint
16 states a cause of action against any one of the resident defendants, the federal court must find
17 that joinder was proper and remand the case to state court."). In deciding whether a joinder is a
18 "sham," "all disputed questions of fact and all ambiguities in the controlling state law are
19 resolved in the plaintiff's favor...." Coker v. Amoco Oil Co., 709 F.2d 1433, 1440 (11th Cir.
20 1983). Thus, the defendant's burden to prove a "sham" joinder is high, and does not permit
21 removal if the plaintiff can articulate a conceivable theory of liability or a good faith argument
22 for extending the law to allow recovery.

23 **D. The Individual Defendant in This Case Is Liable to Plaintiff for Her Libel If She
24 Published False Information Concerning the Plaintiff with Malice**

25 Here, it is alleged that Defendant Dolly maliciously published a false statement
26 concerning the Plaintiff claiming "Time Card Falsification" without proper investigation as to
27 the circumstances. The defamatory publications consisted of oral and written, knowingly false
28 and unprivileged communications, tending directly to injure Plaintiff and Plaintiff's personal,

1 business, and professional reputation. These publications included the following false and
 2 defamatory statements (in violation of Civil Code §§ 45 and 46(3)(5)) with the meaning and/or
 3 substance that Plaintiff violated company policies; that he was such a poor performer that he
 4 deserved written warnings and disciplinary actions against him; that he was incompetent;
 5 dishonest; untrustworthy; a troublemaker; and made false complaints. (Complaint, Paragraph
 6 42). This statement proximately led to the Plaintiff being fired from his position in which he held
 7 for over 16 years. Therefore, liability can be established against Dolly, joinder of the defendant is
 8 proper, and removal to federal court should not be granted.

9 **1. It Is Alleged That Dolly Acted with Malice**

10 The complaint alleges that Defendant Dolly published a false statement concerning the
 11 Plaintiff with malice. Nevertheless, Defendant still claims that "any statement made by Ms.
 12 Dolly about plaintiff were made in the personnel management context without malice..." (Notice
 13 of Removal of Civil Action, Paragraph 11). This argument is without merit as publication occurs
 14 when a statement is communicated to any person other than the party defamed; that publication
 15 may involve internal corporate statements is recognized in Biggins v. Hanson, 252 Cal. App.2d
 16 16, 19 (1967), involving an employee defamed by an immediate supervisors' publication to the
 17 personnel manager. More recently, in Cruey v. Gannett Co. 64 Cal.App.4th 356, 367 (1998),
 18 where the plaintiff's subordinate published accusations of "sexual harassment and other
 19 improprieties" to the "Human Resources Department." In Cruey the court stated:

20 However, none of Lacy's authority stand for the proposition that a complaint to a private
 21 employer, even if made through the proper channels, is absolutely privileged. At best, it
 22 is conditionally privileged subject a finding of malice... Accordingly, we find Lacy's
 23 complaint to Gannett's department of human resources is conditionally privileged subject
 24 to a finding of malice.

25 Here, the Complaint directly on its face alleges that Dolly went outside the scope of any
 26 applicable privileges:

27 Each of these false defamatory per se publications (as set forth above) were negligently,
 28 recklessly, and intentionally published in a manner equaling malice and abuse of any
 alleged conditional privilege (which Plaintiff denies existed), since the publications, and
 each of them, were made with hatred, ill will, and an intent to vex, harass, annoy, and
 injure Plaintiff in order to justify the illegal and cruel actions of Defendants, and each of
 them, to cause further damage to Plaintiff's professional and personal reputation, to cause

1 her to be fired, to justify his firing, and to retaliate against Plaintiff for prior ill will,
 2 rivalry and disputes in retaliation. Therefore, no privilege existed to protect any of the
 3 Defendants from liability for any of these aforementioned publications or republications.
 (Complaint, Paragraph 51).^{1/}

4 **a) Hatred or Ill Will Also Equates Malice**

5 "Malice necessary to prevent application of any conditional privilege is also alleged by
 6 pleading that the publication was motivated by hatred or ill will toward the plaintiff."
 (Complaint, Paragraph 45). By these allegations, plaintiff sufficiently pled malice. (*See id.*)

7 The malice referred to by the statute is "actual malice or malice in fact, that is, a state of
 8 mind arising from hatred or ill will, evidencing a willingness to vex, annoy or injure another
 9 person. The factual issue is whether the publication was so motivated." Agarwal v. Johnson, 25
 10 Cal.3d 932, 944-945 (1979). "Thus the privilege is lost if the publication is motivated by hatred
 11 or ill will toward plaintiff [citations], or by any cause other than the desire to protect the interest
 12 for the protection of which the privilege is given" (quoting Brewer v. Second Baptist Church, 32
 13 Cal.2d 791, 797 (1948)).

14 **b) Publication with Intent to Vex, Annoy or Injure Is Also Alleged**

15 The complaint alleges that each of the false defamatory per se publications were
 16 negligently, recklessly, and intentionally published in a manner equaling malice and abuse of any
 17 alleged conditional privilege, since the publications were made with hatred, ill will, and an intent
 18 to vex, harass, annoy and injure Plaintiff in order to justify the illegal and cruel actions of
 19 Defendants that caused damage to Plaintiff's professional and personal reputation, to cause to
 20 him to be fired, to justify his firing and to retaliate against Plaintiff for prior ill will, rivalry, and.
 21 (Complaint, Paragraph 51). "In the complaint it is alleged that the statements were published by
 22 defendants" . . . with the intent and design to injure, disgrace and defame this plaintiff; and
 23 further, such statements, so made by defendants, exhibited a state of mind arising from hatred or
 24 ill will for this plaintiff evidencing a willingness to vex, annoy, or injure this plaintiff, . . . These

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 26 ^{1/} It is worth noting that in Walrath v. Sprinkel, 99 Cal. App.4th 1237 (2002), the California Court of Appeal
 27 confirmed that, unlike a discrimination claim, an individual supervisor goes outside the scope of the regular
 28 employment bargain, and therefore can be sued individually for retaliation under Section 12940(h) because the
 retaliation statute expressly authorizes an action against an individual supervisor for retaliation. Numerous federal
 courts have also so held.

1 allegations are a sufficient pleading of actual malice to exclude the alleged libels from the
 2 privilege claimed. (Washer v. Bank of America, 21 Cal.2d 822, 831 (1943), Farr v. Bramblett,
 3 132 Cal. App. 2d 36, 46 (1955); *Also see*, Agarwal v. Johnson 25 Cal.3d 932 (1979), 944-945.

4 **c) Knowledge of Falsity is Alleged**

5 “But pleading that defendants published the article with knowledge of its falsity does
 6 adequately allege actual malice Washer v. Bank of America, 21 Cal.2d 822, 831.

7 Plaintiff does alleged that defendants, at the time of publication ‘knew that said
 8 statements were . . . false.’ thus actual malice is alleged, the defense of qualified privilege is met,
 9 and a triable issue of fact is presented.” Boyich v. Howell, 221 Cal.App.2d 801, 803 (1963).
 10 Complaint, Par 51)

11 **d) Reckless or Grossly Inadequate Investigation Is Also Pled**

12 Malice may be established by alleging facts showing a reckless investigation. "Reckless
 13 is, after all, only negligence raised to a higher power." Further "actual malice" may be inferred
 14 when the investigation was grossly inadequate under the circumstances. Vandenburg v.
 15 Newsweek, Inc., 507 F.2d 1024, 1026 (5th Cir. 1975). The failure to investigate as a result of a
 16 purposeful avoidance of the truth establishes recklessness and therefore malice. "Although
 17 failure to investigate will not alone support a finding of actual malice, [citation], the purposeful
 18 avoidance of the truth is in a different category." Harte-Hanks Communications, Inc. v.
 19 Connaughton, 491 U.S. 657, 692 (1989). "[I]naction," i.e., failure to investigate, which 'was a
 20 product of a deliberate decision not to acquire knowledge of facts that might confirm the
 21 probable falsity of [the subject] charges' will support a finding of actual malice." Id.

22 At the case at hand, each of these publications by Defendants, and each of them, were
 23 made with knowledge that no investigation supported the unsubstantiated and obviously false
 24 statements. The Defendants, published these statements knowing them to be false,
 25 unsubstantiated by any reasonable investigation and the product of hostile witnesses. (Complaint,
 26 Paragraph 52). These acts of publication were known by Defendants, and each of them, to be
 27 negligent to such a degree as to be reckless. In fact, not only did Defendants, and each of them,
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1 have no reasonable basis to believe these statements, but they also had no belief in the truth of
 2 these statements, and in fact knew the statements to be false. Defendants, and each of them,
 3 excessively, negligently, and recklessly published these statements to individuals with no need to
 4 know, and who made no inquiry, and who had a mere general or idle curiosity of this
 5 information. (Complaint, Paragraph 52).

6 **2. It Is Alleged That the Statements Published by Dolly Were False**

7 Dolly published a false statement that Plaintiff presented falsified time cards. (Comp, Par
 8 44) Defendant however nonetheless claims that the cause of action of Libel against Dolly is not
 9 justified because "the statements attributed to Ms. Dolly were true, and cannot support slander as
 10 a matter of law." (Notice of Removal of Civil Action, Paragraph 14). However, the statements
 11 that Dolly published concerning the Plaintiff were alleged to be false.

12 The defamatory publications consisted of oral and written, knowingly false and
 13 unprivileged communications, tending directly to injure Plaintiff and Plaintiff's personal,
 14 business, and professional reputation. "These publications included the following false
 15 and defamatory statements (in violation of Civil Code §§ 45 and 46(3)(5)) with the
 16 meaning and/or substance that Plaintiff: violated company policies; that he was such a
 17 poor performer....(Complaint, paragraph 47).

18 There was no intent or effort made by them to conceal the fact that they were late-they
 19 had already phoned in in advance, per Williams Lea rules prior to their 6:00 a.m. official
 20 start time, and the DOCS Center staff, which included the DOCS Center Manager and the
 21 DOCS Center Supervisor, were all already informed that they were running late.
 22 (Complaint, paragraph 12).

23 **3. The Statements Published by Dolly Concerning the Plaintiff Were Not Opinion**

24 Defendant asserts that "any statements made by Ms. Dolly about the plaintiff were
 25 matters of opinion, which cannot support slander liability as a matter of law." (Notice of
 26 Removal of Civil Action, Par 13) However, the complaint specifically states that the Defamatory
 27 statements were understood as assertions of fact, and not as opinion." (Complaint, Par 50).

28 **E. This Court Should Award Fees to Plaintiff**

29 On granting a motion for remand, the federal court may order the defendant to pay
 30 Plaintiff its "just costs and actual expenses, including attorneys' fees, incurred as a result of the
 31 removal..." 28 U.S.C. Section 1447(c); *Also see Morris v. Bridgestone/Firestone, Inc.*, 985 F.2d
 32 238, 240 (6th Cir. 1993). Because the statute unambiguously authorizes the award of attorneys'
 33

1 fees, no showing of bad faith on the part of the removing party is necessary to a fee award under
 2 Section 1447(c); Tenner v. Zurek, 168 F.3d 328, 329-330 (7th Cir. 1999).

3 **V. Conclusion**

4 For the foregoing reasons Plaintiff requests that this Court order that:

- 5 1. The instant action be remanded back to state court;
- 6 2. Defendants pay an award of attorneys' fees and costs to Plaintiff in the
 7 amount of \$1400 or in an amount that the Court deems appropriate,
- 8 3. The Clerk of the Court send a certified copy of the order remanding this
 9 action back to state court to the clerk of the state court where the action was originally filed; and
- 10 4. Such other and further relief as this Court deems proper.

11 Respectfully submitted,

13 DATED: July 20, 2007

14 LAW OFFICES OF MICHAEL HOFFMAN

15 /S/

16 MICHAEL HOFFMAN

17 Attorneys for Plaintiff

18 JUDE DELGADO

19 **DECLARATION OF MICHAEL HOFFMAN IN SUPPORT OF ATTORNEYS' FEES**

20 I, Michael Hoffman, declare as follows:

21 1. I am an attorney duly licensed to practice law in the State of California and before
 22 this Court. I am an attorney with the Law Offices of Michael Hoffman, attorneys of record for
 23 Plaintiff Jude Delgado. I have personal knowledge of the matters stated herein and, if called
 24 upon to testify as a witness, could and would competently testify thereto.

25 2. This declaration is submitted in regard to attorneys' fees and costs expended in
 26 preparing and filing the Motion to Remand, with which this Declaration is concurrently
 27 submitted.

1 3. I am informed and believe that Defendants had no reasonable basis for removing
 2 the case to federal court. I am informed and believe and it is undisputed by Defendants that
 3 Defendant Charlotte Dolly is a resident of the State of California. The reasons for the claims
 4 against Defendant Charlotte Dolly were specified within the Complaint and are cognizable under
 5 California law. Defendants transformed a demurrer, or a FRCP Rule 12 motion, into a separate,
 6 but improvident basis for removal. The proper procedure would have been for defendant to file a
 7 demurrer in San Francisco Superior Court, moving to eliminate, the individual defendants, and
 8 then, if successful, remove the case to Federal Court.

9 4. As a result of the instant Motion, Plaintiff Jude Delgado has incurred and will
 10 incur reasonable costs and attorneys' fees in connection with this motion and the hearing thereon.
 11 I have expended more than 4 hours because of this improvident removal, including review of the
 12 removal file, in research of applicable federal and state laws, preparation of the notice of motion,
 13 the motion, the memorandum of points and authorities and this declarations. I anticipate three
 14 more hours to prepare a reply and two hours to prepare for and attend the hearing on this motion.
 15 I have practiced business, commercial and employment litigation in San Francisco California for
 16 more than 15 years. My current hourly rate is \$350, which is reasonable for like services in the
 17 community in which I practice.

18 5. The total attorneys' fees and costs expended, not including those anticipated, is 4
 19 hours, for a total of \$1400. (Fourteen Hundred Dollars).

20 I declare under penalty of perjury of the laws of the State of California and the United
 21 States of America that there foregoing is true and correct. Executed at San Francisco, California.
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23 DATED: July 22, 2007

LAW OFFICES OF MICHAEL HOFFMAN

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MICHAEL HOFFMAN
 Attorneys for Plaintiff
 JUDE DELGADO